ant's team hauled away the plaintiff's wood. "This (the court say) could hardly have been done without the defendant's knowledge, if it had not his approbation. It was his duty to have restrained them from trespassing on his neighbor's property. *Qui non prohibit cum prohibere possit, jubet.* And the maxim may be applied with great propriety to minor children residing with and under the control of their father." See, also, *Dunks* v. *Grey*, 3 Fed. Rep. 862, 864; also, *Morgan* v. *Thomas*, 8 Exch. 304, where the above maxim is quoted with approval by PARKE, B.

If the above cases are correct, the principal case can hardly be supported. The only way in which it can be distinguished, as it seems to us, is on the ground that the neglect of the parent was not the proximate cause of the damage sustained by plaintiff; but this distinction seems illusory. Although the damage was not perhaps a necessary consequence of the defendant's negligence, it was a natural consequence and one that any prudent man ought to have foreseen. If we concede the above maxim to be a correct statement of a legal principle; if it was the parent's duty to withhold from his infant son so dangerous a weapon, as would seem to be clear upon common-sense principles as well as established by the authorities above cited, then the conclusion seems obvious that he is responsible for the natural consequences of his omission to perform this duty. On principles of policy as well as upon legal principle, it would seem that the father ought to have been held to respond in damages in the principal case. Still the question is not free from difficulty, and perhaps it may finally be settled adversely to the opinion here expressed.

MARSHALL D. EWELL.

Chicago.

Supreme Court of Missouri.

ASKEW *v.* LA CYGNE EXCHANGE BANK ET AL.

A voluntary *bona fide* assignment of personal property, wherever situated, passes it to the assignee at the time of the assignment, and will have priority over subsequent lienors, provided it is not in conflict with some positive or customary law of the state where the property may be located.

The L. bank of the state of Kansas made an assignment in that state for the benefit of its creditors of all of its personal property to J. E. M., a resident of the same state, including a debt due to L. bank from M. bank of the state of Missouri, payable in the latter state. The assignment conformed with the laws of Kansas, and would have been valid had it been executed in Missouri—the assignment laws of the two states being substantially the same. H. A., a creditor of L. bank, and a citizen of Missouri, instituted an attachment suit against L. bank in the courts of the latter state, and garnisheed this debt in the hands of the M. bank. J. E. M., the assignee of the L. bank, interposed an interplea, claiming to be the owner of the debt. *Held*, that as between the attaching creditor and the assignee, the title of the latter would prevail.

THE opinion of the court was delivered by

EWING, Commissioner.—The appellant, on the 27th of February 1880, brought this suit against the La Cygne Bank, a banking corporation created under the laws of the state of Kansas, and there-

tofore doing business as such at La Cygne in that state. The suit was by attachment, and notice of garnishment was on the same day served on the Merchants' National Bank of Kansas City, as garnishee.

In due time the garnishee answered, stating that at the time the notice was served, it had in its possession the notes of several parties which had been placed in its hands by the Kansas bank as collateral security for a debt owing by the latter to the garnishee.

After this answer was filed the respondent, Moore, as assignee of the Kansas bank, filed his interplea claiming to be the owner of the notes, subject only to the lien of the pledge mentioned in the garnishee's answer.

The appellants answered to the interplea denying the claim set up.

The garnishee's answer was taken as true by all parties to the suit, and the contest between the appellants and respondent was over the surplus which it was supposed would remain in the hands of the garnishee after the payment of the debt due to it.

The issue between the interpleader and appellants was tried by the court, without a jury, upon the facts as agreed upon by the parties, and which were substantially as follows: The La Cygne Exchange Bank was a banking corporation organized under the laws of the state of Kansas, and had been doing business as such at La Cygne, in the county of Miami, in said state, since the year 1876. At noon, on February 25th 1880, the bank made an assignment of all its property and effects for the benefit of all its creditors. This assignment was made in conformity with the laws of the state of Kansas upon that subject. Immediately upon the making of the assignment the assignee took possession of the property and effects. The interpleader is the assignee, and undertook the execution of his trust, and all the proceedings of the assignee subsequent to the making of the assignment had been in strict conformity to the laws of the state of Kansas. The property attached in the garnishee's hands had been pledged to the garnishee bank by the debtor bank long before the assignment, as collateral security for certain debts due by the latter to the former. The appellants were residents and citizens of Missouri; the garnishee bank was located in Missouri, and the debt payable in Missouri.

The laws of the state of Kansas governing assignments for the

benefit of creditors were made part of the case, and were in all material matters substantially the same as those of Missouri upon the same subject.

The court refused to declare the law to be that upon the pleadings and evidence the interpleader could not recover, and made its finding for the assignee (the interpleader), and rendered judgment accordingly.

The attaching creditors took this appeal.

It will be seen that the precise legal proposition we have to decide is this: Does a voluntary assignment, for the benefit of all the creditors of the assignor, made in the state of Kansas, of a debt due from a citizen and resident of this state to the assignor, a resident of Kansas, pass the debt to the assignee at the time of the assignment, so as to defeat a subsequent attaching creditor of the assignor in this state, whose attachment is issued and the debtor of the assignor garnished, after the making of the assignment.

There has been much discussion of questions similar to this, but it will neither be necessary or profitable to undertake a thorough review of the conflicting adjudications.

The case of *Bryan* v. *Brisbin*, 26 Mo. 423, is similar to the one at bar, with the important exception that in that case the deed of assignment was in conflict with the laws of Missouri and could not have been enforced here; while it is admitted that the assignment in the case at bar would be valid in Missouri.

In *Einer* v. *Beste*, 32 Mo. 240, the plaintiff and defendant were both residents of Louisiana. The defendant was insolvent and had instituted proceedings for discharge under the insolvent laws of Louisiana. The plaintiff, by a suit of attachment in this state, sought to obtain priority of the other creditors. After a somewhat exhaustive review of the authorities, Judge BAY held that the assignment was good as against this attaching creditor. The same question was similarly decided by this court in *Thurston* v. *Rosenfield*, 42 Mo. 474.

In *Ockerman* v. *Cross*, 54 N. Y. 29, it is held that a voluntary assignment by a debtor residing in another state, valid by the laws of that state, and not in conflict with any law of New York, operates as an assignment of the debtor's property in New York, and the assignees can hold the same against attaching creditors of the debtor. See, also, to the same effect, 40 Barb. 465.

In *Speed* v. *May*, 17 Penn. St. 91, it was held that "a voluntary

assignment made by the owner in Maryland, who resided there, passed property in Pennsylvania to the assignee as against an attachment subsequent to the assignment."

The same question is similarly decided in *Hanford* v. *Paine*, 32 Vt. 442; *Gatewood* v. *Whitlock*, 9 Fla. 86; *Miller* v. *Kanaghan*, 56 Ga. 155; *Gregg* v. *Sloan*, 76 Va. 497; *Law* v. *Mills*, 18 Penn. St. 185; *Johnson* v. *Sharp*, 31 Ohio St. 611; *May* v. *Wannemacher*, 111 Mass. 202; *Caskie* v. *Webster*, 2 Wall. 131.

Mr. Justice STORY, in discussing the question (Story on Conflict of Laws, sect. 411) says: "There is a marked distinction between a voluntary conveyance by the owner, and a conveyance by mere operation of law, in cases of bankruptcy, *in invitum*. * * * In place of a voluntary conveyance of the owner, all that the legislature of a country can do, when justice requires it, is to assume the disposition of his property *in invitum*. But a statutable conveyance, made under the authority of any legislature, cannot operate on any property except that which is in its own territory. This makes a solid distinction between a voluntary conveyance of the owner, and an involuntary legal conveyance by the mere authority of law. The former has no relation to place, the latter on the contrary has the strictest relation to place." And he concludes by saying: "It is, therefore, admitted that a voluntary assignment by a party, according to the law of his domicile, will pass his personal estate, whatever may be its locality, abroad as well as at home. But it by no means follows that the same rule should govern in cases of assignment by operation of law." See note 2 to this section. Such an assignment would, if valid when made, be upheld in the state where the property is found, unless its operation is limited or restrained by some law or policy of the latter: *Hanford* v. *Paine, supra; Ockerman* v. *Cross, supra*. Burrill on Assignments, sects. 302 and 309, maintains the same general doctrine.

A contrary doctrine seems to prevail, according to some authorities cited by the appellant. One is the case of *Johnson* v. *Parker*, 67 Ky. 149, but that is virtually overruled by a much later decision (1884) in *Atherton* v. *Evers et al.*, 20 Fed. Rep. 894, where the general rule as referred to is maintained.

He also refers to other cases seemingly irreconcilable. But, notwithstanding, we think it may be assumed from the weight of authority that the true rule is, that *involuntary* assignments by operation of law do not operate beyond the territory of the state

under the laws of which such compulsory assignment may be made; but that *voluntary, bona fide* assignments of personal property, wherever situated, pass it to the assignee at the time of the assignment, and will have priority over subsequent leinors, provided it is not in conflict with some positive or customary law of the state where the property may be located.

It is admitted in this case that the assignment laws of Kansas and Missouri are substantially similar, and that the assignment under consideration would be valid if made in this state.

It also appears that the attaching creditor can claim no preference over the general creditors in point of merit.

We must therefore hold that the assignee will take the property in preference to the attaching creditor, and there is nothing in the law nor inter-state comity which would justify the courts of this state in holding otherwise.

The judgment below is therefore affirmed. All concur.

HOUGH, C. J.—Adopted as the opinion of the court and judgment will be entered accordingly.

Where the question involved in the principal case has presented itself, courts have adopted many conflicting and irreconcilable theories as to the principles which should govern their decisions. Many have held to the notion that in *all cases* the law of the domicile of the owner, *lex domicilii*, should control the disposition of *all* personal property, whether corporeal movables or choses in action, while others have maintained that the law of the place where the property is actually situated, *lex rei situs*, determined its transfer.

The rule that the law of the forum, *lex fori*, is the test of its validity, has been adopted in numerous cases. And in cases of debt another theory has been advanced, that is, that the law of the place of payment is the criterion, because that is where the debt will ultimately go. See Wharton on Conflict of Laws (2d ed.), § 359 *et seq.*; Story on Conflict of Laws (8th ed.), § *et seq.* 385 .; Burrill on Assignments (4th ed.), § 301 *et seq.*

As a general rule, personal property has no locality, no *situs*, but follows the person of the owner. It is, therefore, governed in its transfer or disposition by the law of the domicile of its owner, by the law of the place where the transfer is made, without regard to the locality where it may be actually situated, so that if a sale be valid where made, it is valid everywhere. 1 Kames's Eq., p. 355, c. 8, s. 3; Story on Conflict of Laws (8th ed.), p. 546. Though this is not a universal rule, but subject to certain well-founded exceptions. The question depends largely upon the manner of the transfer, the nature of the property and the effect upon the rights of citizens in the place where the property is situated. One exception to the rule is, that an assignment is not valid of property in another state, as against citizens of that state, if it is repugnant to the policy or positive institutions of such other state. This exception rests on the ground that there is no comity which requires a state to enforce transfers which are detrimental to her own citizens. The cases generally

sustain this exception, yet, as will be seen, a few repudiate it, because of the narrow and illiberal policy which it is supposed supports it. 2 Kent Com. 455. *Caskie* v. *Webster*, 2 Wall. Jr. 131, does not sustain the exception. This case states the law to be, that the legal *situs* of movables follows the domicile of the owner, and that the law of the actual *situs* protects the claims of creditors domiciled there only against transfers by operation of law. In *Caskie* v. *Webster*, the assignment was made in Virginia, by a citizen of that state. The transfer was good by the laws of Virginia, and included a debt as one item of his property due to the assignor from a citizen of Pennsylvania. Tested by the laws of Pennsylvania, the assignment was invalid. Before the assignee could collect this debt, a Pennsylvania creditor of the assignor attached it. It was held that the assignment effectually transferred the debt to the assignee. GRIER, J., in giving the opinion, said: A debt is a mere incorporeal right. It has no *situs*, and follows the person of the creditor. A voluntary assignment of it by the creditor, which is valid by the laws of his domicile, * * * will operate as a transfer of the debt, which should be regarded in all places. In America, bankrupt or insolvent assignments by operation of law, have not been considered as subject to this rule. But I know of no other established exception to the general rule, that a transfer of personal property, valid by the laws of the owner's domicile, is valid everywhere. I know there are some cases to be found in which the courts of some states of this union have decided that a voluntary assignment for the benefit of creditors, valid by the laws of the creditor's domicile, will be disregarded where it is prejudicial to the interests of the attaching creditors in other states, or invalid by the laws of the state where the debt or the property is attached."

Speed v. *May*, 17 Penn. St. 91, is likewise against sustaining the exception. The assignment was voluntary, and made in Maryland, by a citizen of Maryland, and good by the laws of that state. It included a debt due from a citizen of Pennsylvania to the assignor. This debt was attached by a Pennsylvania creditor of the assignor before the assignee got possession of it. GIBSON, C. J., who gave the opinion, said: "The legal *situs* follows the domicile of the owner, and the law of the actual *situs* protects the claims of domiciled creditors there only against transfer by operation of law. * * * Granting, for the sake of argument, that the actual *situs* of the debt in question was in Pennsylvania, the voluntary assignment of it in Maryland, by the owner of it, vested it in the trustees there against their creditors here. The assignment was as operative to transfer the property in the first instance, as it would have been had it been executed by a citizen of Pennsylvania." In answer to the objection that the assignment should not be sustained because it did not conform to the laws of Pennsylvania, the chief justice observed: "The legal presumption is, that it was intended to be performed at the place where it was made; and, as there is nothing to rebut it, the law of the contract is the law of the place of its origin. * * * The *lex loci contractus* determines the validity of the contract; the *lex fori* controls the remedy." See *Law* v. *Mills*, 18 Penn. St. 185. From the language of the court in the preceding decisions it will be seen that the rule declared is, that the legal *situs* of personal property follows the domicile of the owner, and determines the validity of the assignment, except where the transfer is made by operation of law. Nor do these decisions rest upon the distinction between mere *choses in action* and *corporeal movables*, as claimed in *Guillander* v. *Howell*, 35 N. Y. 675. But if the for-

eign assignment is repugnant to the legislation of the state where the property is situated it will not be sustained: *Philson* v. *Barnes*, 50 Penn. St. 230. In this case the assignment was made in Maryland, and included a debt due from a resident of Pennsylvania to the assignor. The debt was attached before the assignee got possession of it. The statute of Pennsylvania required such assignments to be recorded and notice to be given. This was not done. The court held as the assignment contravened the policy of the statute it could not be sustained against an attachment of one of its own citizens. There seems to be no conflict in the cases on this proposition. If a foreign assignment, though valid, in the owner's domicile where made, of either corporeal movables or choses in action, is repugnant to the positive legislation of the state where the property is situated, there is no good reason why it should be sustained, if it is prejudicial to the interests of citizens of the latter state. To uphold it would be to ignore the public policy of the state as evinced by the legislature. Mr. Justice PORTER clearly states the reasons for this rule in the leading case of *Oliver* v. *Townes*, 2 Mart. N. S. (La.) 93, 102. See, further *Norris* v. *Mumford*, 4 Mart. O. S. 20; *Durnford* v. *Brooks*, 3 Id. 222, 225; *Ramsey* v. *Stevenson*, 5 Id. 23; *Fisk* v. *Chandler*, 7 Id. 24. Mr. Justice STORY, in referring to this principle, says that no one can seriously doubt that it is competent for any state to adopt such a rule in its own legislation, since it has perfect jurisdiction over all property, personal as well as real, within its own territorial limits. Nor can such a rule, made for the benefit of innocent purchasers and creditors, be deemed justly open to the reproach of being founded in a narrow or selfish policy. "But how far," continued Judge STORY, "any court of justice ought, upon its own general authority, to impose such a limitation, *independently of positive legislation*, has been thought to admit of more serious question, since the doctrine which it unfolds aims a direct blow at the soundness of the policy on which the general rule that personal property has no locality, is itself founded:" Story on Confl. of Laws (8th ed.), § 390. See section 380 of Story on Conflict of Laws, where Lord LOUGHBOROUGH is quoted as saying: "It is a clear proposition, not only of the law of England, but of every country in the world where law has the semblance of science, that personal property has no locality; the meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner. With respect to the disposition of it, with respect to the transmission of it, either by succession or by the act of the party, it follows the law of the person." See *Freke* v. *Carbery*, L. R., 16 Eq. 466, where Lord SELBORNE declares that the above passage is simply a translation into English of the maxim *mobilia sequuntur personam*. Lord C. J. ABBOTT'S views seem to accord fully with those of Lord LOUGHBOROUGH, as above given, for he says: "Personal property has no locality, and even with respect to that, it is not correct to say that the law of England gives way to the law of a foreign country, but that it is a part of the law of England that personal property should be distributed according to the *jus domicilii*:" *Birthwhistle* v. *Vardill*, 5 B. & C. 438, 451; s. c. 9 Bligh 32-88; 2 Cl. & F. 571. For further authority on the general proposition, see Story on Conflict of Laws (8th ed.), § 380 *et seq.*, and notes.

But whatever may be urged against the soundness of the exception to the general rule, it has been admitted, in terms, by so many jurists, that its existence as part of the law cannot well be denied. The states adhere to the principle for the purpose of protecting their own citizens; it is never invoked for the benefit of citizens of other states.

And whether the conflict is with a statutory enactment, or contravenes the public policy as reflected by the judiciary, it is not easy to perceive a distinction.

Chief Justice REDFIELD, in *Hanford* v. *Paine*, 32 Vt. 442, admitted the general rule to be that, if good, according to the laws of the owner's domicile, they will have the effect to pass all the personal property of the assignor wherever situated, "unless their operation is limited or restrained by some local law or policy of the state where the same is situated." See *Richmondville Mfg. Co.* v. *Prall*, 9 Conn. 487; *Sanderson* v. *Bradford*, 10 N. H. 260; *Atwood* v. *Protection Ins. Co.*, 14 Conn. 555.

The Massachusetts courts have, in many instances, repudiated the notion of giving effect to such assignments where they operate against their local legislation, or to defeat attachments made by their own citizens: *Zipcey* v. *Thompson*, 1 Gray 243; *Carter* v. *Sibley*, 4 Met. 298; *Edwards* v. *Mitchell*, 1 Gray 239; *Ingraham* v. *Geyer*, 13 Mass. 146. This case was followed in *Fox* v. *Adams*, 5 Greenleaf (Me.) 245; *Means* v. *Hapgood*, 19 Pick. 107. But Chief Justice SHAW, in giving the opinion in the last case referred to, (*Fox* v. *Adams*, *supra*), thus: "This case has been repeatedly doubted in this state." See further, *Taylor* v. *Columbia Ins. Co.*, 14 Allen (Mass.) 353; *Osborn* v. *Adams*, 18 Pick. 245; *Fall River Iron Works* v. *Croade*, 15 Id. 11; *Bradford* v. *Tappan*, 11 Id. 76; *Ward* v. *Lamson*, 6 Id. 358; *Swan* v. *Crafts*, 124 Mass. 453; *May* v. *Wannemacher*, 111 Id. 202. In *Pierce* v. *O'Brien*, 129 Mass. 314, COLT, J., said: "An assignment made by the debtor himself in another state, which, if made here, would be set aside for want of consideration, will not be sustained against an attachment by a Massachusetts creditor, although valid in the place where made. There is no comity which requires us to give force to laws of another state which directly conflict with the laws of our own, or to allow to the act of the debtor resident in another state an effect in disposing of his property, as against his creditors here, which it would not have if he lived in Massachusetts." See further, *Andrews* v. *Herriot*, 4 Cow. 510; *LeRoy* v. *Crowninshield*, 2 Mason 157; *Bishop* v. *Holcomb*, 10 Conn. 444; 2 Kent's Com. 407 *et seq.*; *Sill* v. *Worswick*, 1 Hen. Bl. 693; *Philips* v. *Hunter*, 2 Id. 405; *Lemmon* v. *People*, 20 N. Y. 602; *Hoyt* v. *Thompson*, 19 Id. 226; *People* v. *Com. of Taxes*, 23 Id. 224; *Edgerly* v. *Bush*, 81 Id. 199, 206.

Freen v. *Van Buskirk*, 7 Wall. (74 U. S.) 139, is an interesting case. The facts were: A citizen of New York being indebted to B., a citizen of the same state, mortgaged certain personal chattels which he had in Illinois to B. Two days after, and before the mortgage could be recorded in Illinois, or the property delivered, both being necessary by the law of Illinois (though not by the laws of New York), to the validity of the mortgage, C., to whom A. was also indebted, and who was also a citizen of New York, attached the property which A. had mortgaged to B. in the state of Illinois. B. then brought suit in New York against C. for converting the chattel. C. pleaded in bar the proceedings in attachment in Illinois. The New York courts held that the question whether B. had property in the chattels on the day of attachment was to be determined by the law of the domicile of the parties, and as by the New York laws B. took title to the property the moment the mortgage was executed, the attachment in Illinois was not a bar. The United States Supreme Court reversed this decision, and held that the laws of Illinois governed as to B.'s property in the chattels on the day of the attachment. This case is reaffirmed in *Hervey* v. *R. I. Locomotive Works*, 93 U. S. (3 Otto) 664; see *Clark* v. *Tar-*

bell, 58 N. H. 88; *Danner* v. *Brewer*, 69 Ala. 191.

In *Varnum* v. *Camp*, 1 Green (N. J.) 326, it was held that a general assignment, made in a foreign jurisdiction by a debtor in favor of his creditors, was not valid so as to pass title to the personal effects of the debtor situated within the state of New Jersey as against the creditors of the assignor, if it contravened the essential provisions of the statute of New Jersey regulating such assignments. The fact that the transfer was valid by the laws of debtor's domicile would not render effectual property subject to New Jersey laws. This case was affirmed in *Moore* v. *Bonnell*, 31 N. J. L. (2 Vroom) 90, 94. In *Bentley* v. *Whittemore*, 19 N. J. Eq. 462, the Chief Justice, in commenting on *Varnum* v. *Camp*, *supra*, said: "The ground of decision in that case was, that we had established in this state a local policy under which our citizens had a right to be protected. It was admitted that, as a general rule, a transfer of property valid where made, would be effectual everywhere; but it was also deemed equally clear that the recognised exception to the rule was that it was not to be enforced to the manifest injury of our own citizens. A state cannot be required, thus it was argued, by any of the obligations of comity, to give up it, own system, and substitute in lieu of its any part of the social arrangement of a foreign jurisdiction. This limitation, as well as the rule itself, is firmly established as a part of our international law."

Mr. Justice CORBIN, in *Andrews* v. *Herriot*, 4 Cow. (N. Y.) 510, admitted the general rule to be that the *lex loci contractus* governed, but "with the exception of cases in which the contract is immoral or unjust, or in which the enforcing it in a state would be injurious to the rights, the interests or convenience of such state or citizens."

In *Bryan* v. *Brisbin*, 26 Mo. 423, the assignment was made in Minnesota, and made preferences, and was valid by Minnesota laws, but such preferences were invalid by laws of Missouri. It was held that this assignment would not operate against an attaching resident creditor of the assignor in the Missouri courts. The court said: "We are asked to enforce an assignment, which could not be made and enforced if made in this state, as it must and will be by the laws of Minnesota, in opposition to the claims of a creditor resident here, who has attached the property previous to any notice of assignment. It is not understood that comity requires a court to enforce a contract valid according to the laws of the place where the contract is made, if such enforcement would be attended with manifest injustice to the claims of the citizens of the county where the property is located and where the claim is asserted. Justice must not be sacrificed to courtesy. It is very obvious that if we hold the assignment to prevail over the attachment, we make a discrimination *against* our own citizens. * * * There is no principle of comity which requires us to go this far." See *Brown* v. *Knox*, 6 Mo. 302, 306; *Johnson* v. *Parker*, 4 Bush (Ky.) 149.

Mr. Justice DAVIS, in *Green* v. *Van Buskirk*, 38 How. Pr. 60, truly stated the doctrine of the weight of authority, when he said that there is no absolute right to have such transfers respected, that it is only on principles of comity that it is allowed; "and this principle of comity," remarked he, "always yields when the laws and policy of the state where the property is located have prescribed a different rule of transfer from that of the state where the owner lives."

In referring to Judge STORY'S statement that personal property is governed by the law of domicile, SARGENT, J., in *Dunlap* v. *Rogers*, 47 N. H. 287, observed: "But whatever weight the English or early New York authorities might otherwise have been entitled to,

the great weight of American authority is now the other way; and it may be considered as part of the settled jurisprudence of this country, that personal property, *as against creditors*, has locality, and the *lex loci rei sitæ* prevails over the law of the domicile with regard to the rule of preferences in the case of insolvent estates. The laws of other governments have no force beyond their territorial limits; and if permitted to operate in other states it is upon principles of comity, and only when neither the state nor its citizens would suffer any inconvenience from the application of the foreign law."

Distinction between Debts and Movables.—There has been a distinction taken in some cases as to the *situs* between debts and movables—the latter being capable of having a *situs* not the former—as they follow the domicile of the owner: *People* v. *Com. of Texas*, 23 N. Y. 224. Mr. Justice PECKHAM, in *Guillander* v. *Howell*, 35 N. Y. 657, said *Speed* v. *May*, *supra*, and *Caskie* v. *Webster*, *supra*, were sound law, because of this distinction. But, as above observed, neither of those cases were put upon this distinction, but upon the simple principle that a voluntary assignment of movables, valid where made, is valid everywhere. Yet in both those cases the items in controversy were debts. Mr. Justice PECKHAM, in the case *supra*, in speaking of this distinction, said: "A chose in action cannot be surely said to have any actual *situs* in the place where the debtor resides. As a general principle it is payable at the residence of the creditor if not otherwise expressed, and a tender to be good must be made to the creditor. There would seem, therefore, to be no sound basis for the debtor's state to legislate exclusively as to the legality of the transfer of that debt made by a foreign creditor. In such cases, as in all others where the property transferred does not actually lie within the jurisdiction of another government, a sale or a contract valid where made is valid everywhere."

And in speaking of another Maryland case, Mr. Justice PECKHAM said: "The Supreme Court in the third district, at general term, in *Thurman* v. *Stockwell*, lately held, that the exception did not extend to a debt due from a resident in Connecticut to a resident of this state, but that an assignment thereof valid here, though invalid there by her laws, ought to be valid there also, even as against residents of Connecticut, because a debt is not a *corpus* capable of local position, but merely a *jus incorporeal*."

In *Howard Nat. Bank* v. *King*, 10 Abb. (N. Y.) N. Cases 346, the New York Supreme Court, in referring to this question said: "The rule in regard to personal property that it has no *situs*, but that it follows the person of the owner, is elementary. As a corollary from that rule, it follows that personal property is governed in its transfer and disposition by the law of the domicile of its owner, that is, by the law of the place where the sale is made, so that if a sale or other transfer be valid where made, it is valid everywhere." After admitting the exception that the transfer is invalid in another state in which the property is actually situated, if it conflicts with the laws of that state, and pronouncing it logically inconsistent with the above rule and corollary, the court continued: "From an examination of the authorities in the light of the rule, I am of opinion that the exception affects only movable property, and does not operate upon credits or other choses in action held by the person who makes the assignment or transfer, and that in so far as they are concerned, they are governed by the general rules above mentioned, and that they have no *situs* apart from the domicile of their owner, and if a transfer of them be made in the state in which the owner is domiciled, which is valid there, it is effectual everywhere."

But in *Pilson* v. *Barnes*, 50 Penn. St. 230, it was expressly held that a debt had a *situs*, inasmuch as a foreign assignment could not transfer it in the domicile of the debtor if it contravenes some positive legislative enactment. See, also, *Paine* v. *Lester*, 44 Conn. 196. But see *Noble* v. *Smith*, 6 R. I. 446; *Mowry* v. *Crocker*, 6 Wis. 326; *Smith* v. *Ch. & N. W. Railroad Co.*, 23 Id. 267; *Fuller* v. *Steiglitz*, 27 Ohio St. 355.

Question between Foreign Parties.—It has been repeatedly held, by an almost unbroken line of authorities, that where the question of extra-territorial property arises between a foreign assignee and a foreign creditor, the laws where the assignment was made will determine its validity: *Van Buskirk* v. *Warren*, 39 N. Y. 119; *Abraham* v. *Plestoro*, 3 Wend. 540; *Plestoro* v. *Abraham*, 1 Paige 236; *May* v. *Wannemacher*, 111 Mass. 202; *Whipple* v. *Thayer*, 16 Pick. 25; *Kidder* v. *Tufts*, 48 N. H. 125; *Hall* v. *Boardman*, 14 Id. 38; *Dunlap* v. *Rogers*, 47 Id. 287; *Smith* v. *Brown*, 43 Id. 44; *Richardson* v. *Forepaugh*, 7 Gray 546; *R. I. Bank* v. *Danforth*, 14 Id. 123; *Bank of U. S.* v. *Lee*, 13 Peters 107; s. c. 5 Cranch C. C. 319; *Crapo* v. *Kelly*, 16 Wall. 610; *Pond* v. *Cooke*, 45 Conn. 132; *Dehon* v. *Foster*, 4 Allen (Mass.) 545; *Burlock* v. *Taylor*, 16 Pick. (Mass.) 335.

In *Einer* v. *Beste*, 32 Mo. 240, the parties were all citizens of Louisiana. The assignment was made in that state and good there. It operated upon all of the debtor's property, some of which was in Missouri. One of the creditors of the assignor, resident of Louisiana, attached property in Missouri. It was held that the assignee's right to the property would prevail over the non-resident attaching creditor.

Thurston v. *Rosenfield*, 42 Mo. 474, affirms the principle of this last case. In that case the parties were all residents of New York and New Jersey. The debtor made a voluntary assignment of his effects in New York for the benefit of his creditors, in which certain of them were preferred. The assignment included certain real estate situated in Missouri. It was valid by New York laws, but would have been void if made in Missouri. The plaintiff attached the debtor's Missouri property. It was held that the attachment suit could not be maintained. The court affirmed the general principle that a foreign assignment, made directly in opposition to their legislation, should never have the effect of giving an advantage to non-resident creditors to the injury of their own citizens. "But," said the court, "as this case presents no such question, we think comity requires and justice will be subserved by holding the assignment good according to the laws of the place where executed. See *First National Bank* v. *Hughes*, 10 Mo. App. 7, 22, where it was held that a deed of assignment of land, void where made, but valid by laws of Missouri, would effectually pass title to land in Missouri, against an attachment upon such land at the suit of a citizen of a third state. See *State Bank Receiver* v. *Plainfield Bank*, 34 N. J. Eq. 450.

In *Bently* v. *Whittemore*, 19 N. J. Eq. 432, the assignment was made in New York between New York parties and good there. It was sought to be attacked in the courts of New Jersey, in so far as it operated upon property within that state, by a non-resident, because it was invalid by New Jersey laws. Mr. Justice BEARDSLY, in giving the opinion, said: "Upon what principle can a citizen of another state ask us to refuse to recognise the validity of an assignment made in the state of New York and in conformity to her laws? Upon what plea consistent with comity, under such circumstances, are the authorities of this government to repudiate a transaction valid by the laws of a sister state? If the question touched one of our own citizens, we could vindicate our rejection of such transaction on

the ground of our statute, passed legitimately, for the special regulation of the affairs of such citizen. But if such a rejection relates to the citizens of another state, how is such a line of conduct to be justified? We might, indeed, urge, as a sort of excuse, that the laws of New York regulating assignments were not similar to the laws of this state, and that we preferred the regulations of our law. * * * But I cannot think we have a right to endeavor to arbitrate in such a concern. * * * The true rule of law and public policy is this: "That a voluntary assignment made abroad, inconsistent in substantial respects with our statutes, should not be put in execution here to the detriment of our own citizens, but that, for all other purposes, if valid by the *lex loci*, it should be carried fully into effect." So, in *Whipple* v. *Thayer*, 16 Pick. 25, this rule is well illustrated. The parties were all citizens of Rhode Island, where the deed of assignment was made and operated to convey property in Massachusetts. It conformed to Rhode Island laws, but not with the laws of Massachusetts. A Rhode Island citizen attached a portion of the property in Massachusetts. The title of the assignee was held to prevail. *Burlock* v. *Taylor*, 16 Pick. 335, and *Daniels* v. *Willard*, Id. 36, hold likewise.

In *Atwood* v. *Protection Ins. Co.*, 14 Conn. 555, the subject of controversy was a debt due from a company in Connecticut to a citizen of Ohio. The assignment, made in Ohio and good there, transferred this debt to the assignee, also a citizen of Ohio, but it did not conform to Connecticut laws. A Pennsylvania citizen attached this debt in Connecticut. It was held that the assignment effectually passed the debt. See further, *Richardson* v. *Leavitt*, 1 La. Ann. 430. *Bholen* v. *Cleveland*, 5 Mason 174, is an instructive case on this subject. The courts of New Hampshire have announced this rule: *Sanderson* v. *Bradford*, 10 N. H. 260.

But *Paine* v. *Lester*, 44 Conn. 196, does not seem to harmonize with the above cases. The case makes no distinction between citizens of Connecticut and citizens of sister states. The facts were: A corporation of Pennsylvania made an assignment for the benefit of its creditors in that state, and which was valid there. One item included a debt due from a citizen of Connecticut. The transfer was not good by laws of Connecticut. After assignment a citizen of Rhode Island attached the debt in Connecticut. The attachment was held to prevail. In this case it was said (p. 204): "The citizens of all our sister states have, by the Constitution of the United States, the same privileges with our own citizens, and any one of them who has availed himself of the legal remedies furnished by our laws, to secure payment of a debt due him, has the same claim to the assistance of our courts that one of our own citizens would have." But the doctrine of this case is exceptional.

In *Rhode Island Bank* v. *Danforth*, 14 Gray (Mass.) 123, the Massachusetts Supreme Court said: "An execution has sometimes been made in favor of creditors residing in Massachusetts, and who had made attachments here which were sought to be avoided by an assignment or transfer in another state to secure creditors. But this is not the case here; all the parties are citizens of Rhode Island, and a valid mortgage there may transfer the property in Massachusetts."

Actual Change of Possession.—If there is an actual change of possession, the transfer is good everywhere, yet it has been held by some cases, that this change must conform to the laws of the place where the property is situated: *Koster* v. *Merritt*, 32 Conn. 246; *Mead* v. *Dayton*, 28 Id. 33; *Chafee* v. *Fourth National Bank*, 71 Me. 514; *Forbes* v. *Scannell*, 13 Cal. 241; *Philson* v. *Barnes*, 50 Pa. St. 230; *Hanford* v. *Paine*, 32 Vt. 442;

Rice v. *Curtis*, 32 Vt. 460, 464. Thus, in the last case, the assignment was made in New York and valid, but not in conformity to the laws of Vermont, where the property was situated. The assignee took actual possession. It was held the title of the assignee was not effectual. And in *Philson* v. *Barnes*, 50 Pa. St. 230, the assignment contract was made in Maryland, and operated on property in Pennsylvania. It was valid in Maryland, but not in conformity with the laws of Pennsylvania, because not recorded in the county where the property was located. The property was attached by a Pennsylvania citizen, and his title was sustained. But in *Ockerman* v. *Cross*, 54 N. Y. 29, a different rule was laid down. The assignment was executed in Canada, and valid there, but not in compliance with the laws of New York, because not "prepared, acknowledged and recorded." The assignee got possession of the property. It was held that the assignee's title to the property was complete. And a like ruling is made by the Supreme Court of California, in *Forbes* v. *Scannell*, 13 Cal. 242. The property was located in California, and owned by citizens of the United States residing and doing business in Canton, China. The assignment was executed in China, but was not good by the laws of California. The assignee took actual possession, and his title was held good. BALDWIN, J., in giving the opinion, said (p. 277): "The truth is, we do not consider this question as one of comity at all. It is a pure question of property. By our general laws we recognise the duty of government to protect property, and that is, property which is acquired by contract, lawful and effectual to pass title in the place where it is made. It might as well be said, that if a man made his money by usury in California, and carried it into Pennsylvania, the courts of that state would refuse to recognise his right, because usury is against the policy of Pennsylvania. Or if won at cards, in Mexico, where no law exists against gaming, it would cease to be his property whenever brought into this state."

Transfer Valid by Lex loci Contractus and Lex fori.—If the assignment is good by the laws of the state of the assignor's domicile where the assignment is made, and also valid where the property is situated, it will be upheld as against an attaching creditor in the courts of the latter state. *Miller* v. *Kernaghan*, 56 Ga. 155. In answer to the contention that the domestic tribunals will hold assets against foreign assignment, the court said: "Certainly this would be done if the assignment were not comformable to our own laws, but there would be no inconsistency in recognising the assignment as perfectly valid here, and then refusing to yield to it. There may be decisions in other states or countries on that erratic line, but we are sure sound principle is the other way, and so we believe is the weight of authority. * * * An assignment, whether foreign or domestic, that presents no conflict with any law, is to have full effect on all assets to which its terms apply." This case fully accords with the principal case. And it was held, in *Ockerman* v. *Cross*, 54 N. Y. 29, that such an assignment, not invalidated by any law of New York, would pass title of personal property of the debtor, situated in that state, to the assignee. To same effect, see *Walker* v. *Whitlock*, 9 Fla. 87, 103. After reviewing the authorities, the court said: "This assignment being a *voluntary* one, by deed, formal and irrevocable, containing no provisions repugnant to our laws, nor to the policy and positive institutions of this state, and there being nothing to prohibit the assignors, who are citizens of other states, from a free disposal of their personal property situated here, we must, upon the principles of comity between sister states, hold the assignment valid here, and that it operated at its execution to vest the title in the assignee and divested all the interest of the as-

signor, unless void for want of delivery of the chose of action assigned to the assignee."

In *Gregg* v. *Sloan*, 76 Va. 497, debtors of North Carolina conveyed their property in trust to secure the payment of their debts, including a debt due them from a citizen of Virginia. The deed was properly recorded in North Carolina, but before it was recorded in Virginia, a Virginia citizen attached the debt, and the land securing it. It was held that the assignee had the prior title. See *Richardson* v. *Rogers*, 45 Mich. 591.

The recent case of *Atherton* v. *Ives*, 20 Fed. Rep. 894, fully sustains this principle. In that case the deed of assignment was legally executed in New York, by residents of that state, and included personal property in the state of Kentucky. After the assignment was made, this property was attached by a citizen of Kentucky. It was insisted that the assignment should not be sustained against a resident attaching creditor, because it was invalid by the laws of Kentucky, inasmuch as it gave preferences, and that whether invalid or not, comity did not require that it should be sustained against a citizen of Kentucky. The assignee's title was held to prevail over that of the attaching creditor, and it was held that the assignment was not invalid by Kentucky's laws because of preferences, and would have been valid if it had been made in Kentucky, and that comity required that assignments made in other states should be respected, unless contrary to some positive law of Kentucky. The court was also of the opinion that no distinction should be taken between "home creditors" and non-resident ones, unless compelled by legislative will, clearly expressed.

EUGENE MCQUILLIN.
St. Louis, Mo.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ARKANSAS.[2]
SUPREME COURT OF ILLINOIS.[3]
COURT OF CHANCERY OF NEW JERSEY.[4]
SUPREME COURT OF RHODE ISLAND.[5]

ACTION.

Damages to Adjacent Property Owners from Public Improvement in a Street—Liability therefor, upon whom it Rests—Contribution of Railroad Company to Cost.—The mere contributing of material aid by a private individual to a city, to enable the latter to execute a public work not unlawful in itself, is not necessarily attended with liability on the part of him who extends such aid, for injury that may thereby

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 114 U. S. Rep.
[2] From B. D. Turner, Esq., Reporter; to appear in 44 Ark. Rep.
[3] From Hon. N. L. Freeman, Reporter; to appear in 111 Ill. Rep.
[4] From Hon. John H. Stewart, Reporter; to appear in 39 N. J. Eq. Rep.
[5] From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.